



880 Dubuque Avenue
South San Francisco, CA 94080
650-615-9000

Octel 250 Voicemail Maintenance Agreement

City Information:

Organization Name: City of Milpitas
Street: 1265 N. Milpitas Blvd
City: Milpitas
State: CA
Zip: 95035

Phone: (408) 586-2703
Fax: (408) 586-2725
City Contact: Terence M. Medina
Title: Deputy Chief Information Officer

Billing Address (if different than above):

Street: 455 East Calaveras Boulevard
City: Milpitas
State: CA
Zip: 95035
Billing Contact:

Equipment Address: same

Street:
City:
State:
Zip:

1. Agreement:

This Maintenance Service Agreement (herein referred simply as the Agreement) is between NetVersant National, Inc. dba NetVersant - San Francisco (NetVersant) and the City of Milpitas (City).

- a. This Agreement is for the purchase of services by City and defines the associated terms and conditions.
- b. This Agreement shall become effective upon the execution of the Agreement by all parties. This Agreement shall terminate on its third anniversary date unless otherwise terminated or extended pursuant to this Agreement
- c. The Term of Service and effective coverage dates are defined in Sections 2 and 3.

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2. Service Delivery:

- a. Agreement Term: 3 Years
- b. Start Date: Upon the execution date defined in Section 1 (b) above.
- c. Equipment Covered: Described in Exhibit "A" to this Agreement, which is incorporated by this reference herein.
- d. For Service call toll free 1-877-786-4833.

3. Charges:

- a. Annual Charge. City agrees to pay to NetVersant **\$5,500.00** per year for the services defined in this agreement, applicable taxes are not included. The total amount for the 3 years of maintenance shall not exceed \$18,000.
- b. Payment. Payment to be made Annually, in advance.
- c. City agrees to pay any and all municipal, county, state or federal sales, excise or other taxes or fees that may be levied.
- d. Payment is due within thirty (30) days of an invoice date. A late payment charge equal to 1-1/2% per month or the maximum rate allowed by law (whichever is less) will be applied to all balances not received when due.
- e. Changes in Equipment or scope of service may result in a change in price, to be mutually agreed to by signed addendum.
- f. Services rendered for work not covered by this Agreement can be provided at our then current Time & Materials rates. Any work outside the scope of this agreement can only commence after receiving approval from the City. The Current T&M Labor Rates are contained in Schedule B of this agreement which is incorporated by this reference herein.

4. Maintenance Services:

- a. Remedial Service. NetVersant will perform remedial maintenance services for covered Equipment upon request by the City in order to restore malfunctioning operating component parts of the Equipment to proper working order.
- b. Performance. Maintenance or service work is to be performed by NetVersant authorized personnel only.
- c. Part Replacement. NetVersant reserves the right to replace any part with a functionally equivalent used or remanufactured part of comparable quality. The replacement equipment shall become City's property and the replaced equipment shall become NetVersant's property.

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- d. **Limited Warranty.** NetVersant EXPRESSLY EXCLUDES ALL WARRANTIES, WHETHER STATUTORY, EXPRESSED, IMPLIED, OTHER THAN THE LIMITED WARRANTY SET FORTH ABOVE. AMONG THE WARRANTIES EXPRESSLY EXCLUDED ARE THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
 - e. **Business Day and Hours.** Unless otherwise agreed to by written amendment, NetVersant shall provide the Services set forth in this Agreement. For minor issues, between the hours of 8am-5pm business days, an 8 business hour response time will apply.
 - f. **Response Time.** NetVersant shall respond to Major Failures during the Business Day (as hereinafter defined), within two (2) Business Hours of notification by City contact and by close of business the next business day after notification for all other failures. The obligations for response by NetVersant outside of normal Business Hours, if any, together with the charges therefore, will be at our then current Time and Materials Rates.
 - g. **Major Failures.** Major Failure” means (i) the System cannot make or receive any voice or data call; (ii) twenty-five percent (25%) or more of the system is inoperable; (iii) and any additional conditions, if any, as agreed to in writing.
 - h. **The System.** NetVersant will provide the Services on the equipment constituting the City’s Voicemail system (the “System”) and ancillary equipment as more particularly described in Schedule A. During the term of this Agreement, City will not permit any outside contractor other than NetVersant to perform any installation, removal, relocation, maintenance, repair or modification on or of the System. City agrees to advise NetVersant promptly of any relocation or modification of the System.
5. **Maintenance Services not included:** Maintenance services does not include any services necessitated by, or of the types described in, any of the following:
- a. Labor and material costs for the addition of equipment or relocation of same. These are Move, Add, and Changes (MAC) and can be provided at our then current Time and Material (T&M) rates. Any Move, Add or Changes must be approved by the City prior to commencement of work by NetVersant.
 - b. Operating supplies, accessories, paper, electrical work external to the system, and battery back-up systems.
 - c. Labor and material costs for component parts that do not effect the normal operation of the system (cabinets, etc.).
 - d. The negligent, intentional, or willful acts of City or third parties.
 - e. Any act external to the system that causes, directly or indirectly, a system failure, either immediately or later, or other malfunction including without any limitation, failures of trunk or toll lines, other equipment connected to the system, or abnormal environmental conditions, power failures or

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fluctuations, (for example power fluctuations and failures caused by lightning), flooding, water damage, and any other equipment damage associated with acts of God.

- f. When equipment is deemed unsupportable by the Manufacturer, or is otherwise deemed not serviceable by due to lack of replacement part availability.
- g. Any acts or events which may adversely affect the performance of the system, occasioned by acts of City, or any other third party.

6. City's Responsibilities: City agrees to perform in a timely manner, at City's sole expense, the following responsibilities in support of NetVersant's Services under this Agreement:

- a. Notify appropriate communications product and service suppliers of NetVersant responsibilities and authority to act on City's behalf;
- b. Provide NetVersant with a suitable work area (including telephone) on City's premises;
- c. Appoint an administrator (the "Contact") knowledgeable in City operational requirements as a point of contact to NetVersant and with authority to act on City's behalf in matters relating to this Agreement, including issuance of purchase orders;
- d. Provide the proper environment, electrical and telecommunications connections as specified by the System's vendor (s);
- e. Maintain back-up files and discs for all relevant software comprising a portion of or being related to the System;
- f. Not relocate or modify any portion of the System or its components, or allow anyone access to the internal components and software without written permission of NetVersant; and
- g. Provide to NetVersant access to any on-site parts kit and equipment inventory. Currently there are no on-site parts kit or equipment inventory within the City.

7. Termination: City may terminate this Agreement with thirty (30) day written notice for any reason. NetVersant may terminate this Agreement with thirty (30) day written notice effective at the end of the most recent quarterly payment period for any reason.

8. Remedies: In the event that City is in Default under this Agreement, NetVersant may cancel or terminate any or all Service(s) provided.

9. Additional Limitations on Liability and Damages: NetVersant IS NOT OBLIGATED TO PROVIDE MAINTENANCE, AND SHALL NOT, WITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, BE HELD RESPONSIBLE OR LIABLE FOR ANY DELAY, FAILURE OF PERFORMANCE, LOSS OR DAMAGE, RESULTING FROM CITY FAILURE TO FULLY PERFORM CITY OBLIGATIONS UNDER THIS AGREEMENT.

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10. Default:

- a. Default. If either party fails to comply with any material term or condition of this Agreement other than an agreement to pay money, the other party may give written notice of such failure. If, within thirty (30) days after receiving such notice, the non-complying party fails to (i) correct its performance or (ii) commence and continue a good faith effort to correct its noncompliance within a reasonable time, the party shall be in default ("**Default**"). Breach of any payment obligation on the date the payment is due constitutes a Default, which requires no notice to be given by NetVersant.
- b. Remedies. Upon the Default of either party, the non-Defaulting party may, in addition to any of the rights it may have at law or in equity: (i) terminate this Agreement and immediately stop performing under this Agreement, including the performance of any future obligations hereunder and (ii) exercise any remedy upon Default as is identified in any applicable Exhibit to this Agreement.
- c. Limitation on Time for Instituting Litigation. Any claim for damages or other remedy arising from this Agreement must be commenced within two (2) years after the action arises.

11. Limitation of Liability: The liability of NetVersant for damages arising out of either: (1) the furnishing of the Service, including but not limited to mistakes, omissions, interruptions, delays or errors or other defects, representations, or use of the System or any system upon which NetVersant provides Services or (2) the failure to meet response time or other Service obligation, whether caused by acts or omission, shall be limited to the one (1) months Service Charge under this Agreement. **NETVERSANT SHALL NOT BE LIABLE TO CITY OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, RELIANCE, CONSEQUENTIAL, EXEMPLARY, SPECIAL DAMAGES, OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO ANY LOSS BY CITY OF BUSINESS, REVENUE, GOODWILL OR PROFITS FOR ANY REASON WHATSOEVER, INCLUDING BUT NOT LIMITED TO, ANY ACT OR OMISSION, FAILURE TO PERFORM, DELAY, INTERRUPTION, FAILURE TO PROVIDE THE MAINTENANCE SERVICES OR ANY FAILURE IN OR BREAKDOWN OF FACILITIES ASSOCIATED WITH THE SYSTEM OR ANY SYSTEM UPON WHICH NETVERSANT PROVIDES MAINTENANCE SERVICES.** NetVersant shall not be liable for any claims for loss or damages involving: (1) Any act or omission of the City or any third party to this Agreement; or (2) Any delay or failure of performance of the System, the equipment incidental thereto or the failure or delay in performing any Services due to causes beyond NetVersant's control. NetVersant makes no representations or warranties of any kind, express or implied, with respect to the equipment, its' condition, performance, merchantability, fitness for a particular purpose or any other matters.

12. Force Majeure: NetVersant will not be responsible or liable in any way for its delay or failure to perform its obligations under this Agreement during any period which performance is prevented or hindered by conditions beyond its control, acts of God, flood and other weather conditions, war, embargo, refusal of any supplier to provide NetVersant or City the necessary parts and technical support, strikes, labor disturbances,

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explosions, riots, laws, rules, regulations, and order of any governmental authority. If such a period extends for more than sixty (60) days, then the City's obligations, except its obligation to pay for services or other effort already performed by NetVersant, will be suspended and commensurately extended until such time as performance is no longer prevented or hindered.

- 13. Indemnification:** City shall indemnify NetVersant ("Indemnatee") against any claims for bodily injury or death, or damage to personal or real property asserted by a third party against the Indemnatee arising out of or relating to the intentional or negligent acts or omissions or breach of its obligations hereunder by the party from whom the indemnity is sought (Indemnifying Party). The Indemnatee shall notify the Indemnifying Party within thirty (30) days of receipt or discovery of any such claim. The Indemnatee hereby grants the Indemnifying Party the right to defend, with counsel reasonably acceptable to the Indemnatee, any suit based upon such claim, and the Indemnatee shall be available for a reasonable time to cooperate in assisting the defense of the suit.

14. Miscellaneous:

- a. Subcontracting. NetVersant may subcontract any or all of the work to be performed by and under the terms and conditions of this Agreement upon written approval of the subcontractor by the City. NetVersant will be responsible for the work of such subcontractors and for the fulfillment of the terms and conditions of the Agreement.
- b. Access. NetVersant shall have, during normal business hours (8:00a.m. to 5:00p.m. PST) full and unrestricted access to the Premises for the purposes of performing the Maintenance Services, installing additional equipment and/or repairing the equipment covered by this Agreement.
- c. Successors and Assigns. The terms and provisions of this Agreement are intended solely for the benefit of and shall be binding upon and shall insure to the benefit of the parties hereto and their respective successors and, if permitted, assigns and it is not the intention of the parties to confer third party beneficiary rights upon any other person or entity.
- d. Modifications to Agreement Terms. The terms and conditions contained in this Agreement constitute the entire agreement of the parties and supersede all previous written and oral representations and/or agreements respecting the same subject matter between the parties. This Agreement may be amended only in writing, signed by City and an authorized NetVersant Executive.
- e. Toll Fraud Disclaimer. NetVersant makes no representation or warranty that the equipment is technically immune from or prevents fraudulent intrusions into and/or unauthorized use of the System (including any interconnection or a long distance network). City assumes the risk of any and all fraudulent use of the System, and agrees to pay for all charges incurred as a result thereof. NetVersant will not be liable for any loss, cost, expense, or damages for calls made through use of the equipment.

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Approval Signatures

By signing below, the following individuals hereby represent that they have legal authority to obligate their respective organizations to this agreement.

City of Milpitas

Date: _____

By: _____

Charles Lawson, Interim City Manager

Approved as to Content:

Approved as to Form:

By: _____

By: _____

Bill Marion, Information Services Director

City Attorney

Attest:

By: _____

City Clerk

AUTHORIZED NETVERSANT SIGNATURE

Date: _____

By: _____

This signed Agreement together with a Purchase Order, if applicable, shall be sent to the following address:

NetVersant
880 Dubuque Avenue
South San Francisco, CA 94080



880 Dubuque Avenue
South San Francisco, CA 94080
650-615-9000

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Schedule A

Equipment Specifications and Detail



City of Milpitas

Current Configuration-City Provided

Octel Overture 250 S# 13114
ARIA 3.00.09-1 software
16 ports of NEC SMDI Integration
4 SCSI Drive Modules
650 Mailbox Licenses
64 Active Application m/b's
Tape Backup installed

Annual Maintenance Coverage *

7x24x365 All Parts and Labor plus tax
Total not to Exceed \$18,000

\$5,500.00

* A remote system audit will be required before maintenance coverage begins.

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Schedule B Current T&M Labor Rate

Description	Hourly Rate
<i>Moves / Adds / Changes & Additional Technical Labor for telephone system</i>	
Monday through Friday	\$ 95.00
Saturday and/or Monday through Friday (Hours outside specified PPM)	\$ 142.50
Holidays and Sundays	\$190.00
<i>Octel Voice Mail and Symposium Call Center products</i>	\$120.00
Monday through Friday	
Saturday and/or Monday through Friday (Hours outside specified PPM)	\$180.00
Holidays and Sundays	\$240.00

T&M Labor Rates are subject to change without notice.